

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TAMMIE ANDRE)	
Claimant)	
VS.)	
)	Docket No. 217,609
WILDE TOOL CO., INC.)	
Respondent)	
AND)	
)	
EMPLOYERS MUTUAL CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Respondent requested review by the Appeals Board of a preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict on January 31, 1997, and amended by a Nunc Pro Tunc Order for Compensation dated February 10, 1997.

ISSUES

Respondent raised the following issues for Appeals Board review:

- (1) Whether claimant suffered an accidental injury arising out of and in the course of her employment with respondent.
- (2) Whether claimant gave respondent timely notice of the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) Both issues raised by the respondent are issues that grant the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

Claimant was employed by the respondent as an assembler which required her to assemble tools that had been previously electroplated. Some of the electroplated tools were dry when they were assembled, however, some of the tools were still wet with chemicals from the electroplating process. Claimant testified that at certain times, due to production levels and to provide relief for employees for breaks or lunch, she was required to work in the electroplating room. During those times, she worked around and was exposed to chemicals used in the electroplating process.

Claimant testified she first started noticing a rash on her hands and that her hands were swollen sometime in May of 1996. Claimant testified she did not suspect at that time that the hand problem was related to her work. The first time claimant sought help for relief of her itching hands was from a local pharmacist who recommended some lotion for the itching.

Because her hand problem persisted, claimant, on July 24, 1996, went to her family physician, Delbert Larson, M.D. Dr. Larson prescribed an antibiotic and felt that claimant's hand problem was a result of a chemical buildup. After claimant's second appointment with Dr. Larson, she notified him she wanted to know the source of her problem. Dr. Larson then referred claimant to Michael D. Giessel, M.D., a dermatologist in Topeka, Kansas.

Dr. Giessel saw claimant for the first time on September 20, 1996. Dr. Giessel, after his initial examination, wrote a work restriction for the claimant to give to her employer which stated "needs to be restricted to work in an area free of electroplating chemicals, or be entirely off." Dr. Giessel also summarized his examination of the claimant on September 20, 1996, in a dermatology consulting report which he sent to Dr. Larson. In that report Dr. Giessel's impression was as follows:

"I think this probably is a contact dermatitis to some of the electroplating materials potentially nickel or chromates or cobalt. She may also have an irritant dermatitis, but the itch is bad enough I suspect allergic. I do not see the morphology for a severe irritant dermatitis."

The doctor recommended treatment was for the claimant to use an Ultravate ointment. Claimant returned to Dr. Giessel for a patch test utilizing some of the chemicals used by the respondent in the electroplating process. Dr. Giessel requested material safety data sheets on the chemicals the claimant had provided him and he utilized for the patch test. However, the employer would not provide the materials safety data sheets to him and although some of the patch testing was positive the results were inconclusive without the sheets.

Claimant was terminated from her employment with the respondent on October 1, 1996, to be effective September 20, 1996. The respondent discovered claimant had removed samples of chemicals from the respondent's premises without respondent's permission after the respondent was contacted by Dr. Giessel in reference to the material safety data sheets.

At the time of the preliminary hearing, January 29, 1997, claimant had been released on January 13, 1997, from Dr. Giessel's care to return P.R.N. Dr. Giessel's medical note dated January 13, 1997, indicated that claimant's hands looked great. He told claimant to continue using the prescription lotion and to "pamper her hands" until the first of April.

Claimant testified her hand condition at the present time was now normal. The only change claimant testified she had had in her living conditions since May of 1996 when she first noticed the rash and swelling in her hands was she no longer worked for the respondent. Claimant also testified she never used ointment or lotion on her hands or worked with gloves until after she noticed the rash and swelling of her hands in May of 1996.

Respondent introduced, at the preliminary hearing, a report from Allen J. Parmet, M.D., dated January 28, 1997, who examined the claimant at the request of the respondent on December 15, 1996. Dr. Parmet also had the benefit of medical records of Delbert Larson, M.D., and Michael Giessel, M.D., as well as the material safety data sheets from the respondent. Dr. Parmet diagnosed irritant dermatitis but determined the etiology was wearing plastic or latex gloves at work. He further concluded that if there were any allergies involved with the claimant's hand problem then he attributed the allergic dermatitis to the over-the-counter medication claimant had applied to her hands.

The Appeals Board finds the greater weight of the evidence contained in the preliminary hearing record establishes that it is more probably true than not that claimant's dermatitis condition was a result of her exposure to chemicals at the work place. The Appeals Board finds claimant's testimony, coupled with treating physician Dr. Giessel's medical records, established a causal connection between claimant's dermatitis and her employment. The Appeals Board is mindful the report of Dr. Parmet, hired by the respondent and who saw the claimant one time, attributed claimant's dermatitis condition to either using gloves or the use of medicated hand lotion. However, claimant testified the rash and the swelling of her hands appeared before she started to use either gloves or any type of medicated hand lotion.

(2) The current notice statute requires the claimant to give the respondent notice of a work-related accident within ten days or show just cause for failure to give notice within ten days. See K.S.A. 44-520. The Administrative Law Judge found the appropriate date of claimant's accident was September 19, 1996, the last day she worked for the respondent before she was terminated. He also found claimant had given notice of accident within ten

days thereof. The Appeals Board agrees with the Administrative Law Judge and thus affirms that finding. The Appeals Board concludes the claimant was exposed to chemicals through her last day worked of September 19, 1996, and therefore finds that date as the appropriate date of accident. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). The Appeals Board also concludes the medical note written by Dr. Giessel on September 20, 1996, and given to the respondent by claimant when she notified the respondent she needed to be restricted from the electroplating chemicals is sufficient to satisfy the notice requirement contained in K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Compensation dated January 31, 1997, and amended by the Nunc Pro Tunc Order for Compensation on February 10, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Ronald J. Laskowski, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director